


FILED

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

MAR 28 2019

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY  DEPUTY CLERK

UNITED STATES OF AMERICA,

Plaintiff,

v.

ROSALINDA GARCIA,

Defendants.

Civil No. 5:19-cr-56(5)-OLG

ORDER

On this date the Court considered Defendant Rosalinda Garcia's Motion for Discovery (docket no. 84), Motion for Discovery of Parts of Co-Defendant Jose Perez' Pretrial Services Report (docket no. 85), and Motion to Suppress (docket no. 86). The Government has responded to these motions (docket nos. 124, 125, 127). The Court finds that the motions should be DENIED.

Background

On January 16, 2019, the Government arrested Defendant Rosalinda Garcia and conducted a search of her bedroom. Defendant was subsequently charged in a six-count indictment with possessing and conspiring to distribute cocaine and methamphetamine, and possessing a firearm in furtherance of drug trafficking crimes. Docket no. 49. On March 15, 2019, the Court entered an Order accepting Defendant Garcia's waiver of personal appearance at arraignment and entering her plea of not guilty. Docket no. 114.

On March 2, 2019, Defendant Garcia filed two motions regarding discovery. Docket nos. 84, 85. In the first motion, Defendant Garcia seeks a broad array of material that Defendant Garcia contends is discoverable under 18 U.S.C. § 3500; Rule 16 of the Federal Rules of

Criminal Procedure; and Local Rule CR-16. Docket no. 84. Defendant Garcia has also separately moved for discovery of portions of the pretrial services report prepared regarding her codefendant Jose Perez, who she asserts is her live-in boyfriend or common law spouse. Docket no. 85. In addition, Garcia has moved to suppress evidence seized during the search of her bedroom. Docket no. 86. The Government has responded to all three motions. Docket nos. 124, 125, 127.

Legal Standards and Analysis

On February 19, 2019, the Court entered an Order Concerning Discovery and Pretrial Motions, which ordered the Government to provide to Defendants or permit inspection and copying of all discoverable items set forth in Fed. R. Crim. P. 16(a) not later than 20 days after the date of arraignment.¹ Docket no. 81 at 2-3. That Order also instructed the parties to confer to attempt to resolve any dispute regarding discovery before the filing of any motion to compel discovery, docket no. 81 at 5, and “strongly encouraged” Defendants to “refrain from filing any pretrial motion requesting discovery materials already covered by this Order.” Docket no. 81 at 1. Defendant Garcia’s motion for discovery was filed before her waiver of personal appearance at arraignment on the superseding indictment in this case,² docket no. 112; is largely duplicative of the information covered by the Court’s Order Concerning Discovery and Pretrial Motions; and contains no indication that Defendant’s counsel conferred with the Government regarding these requests for discovery before filing the motion. Since that motion was filed, the Government and Defendant Garcia have agreed to entry of an order permitting and regulating disclosure of

¹ The Order noted that “the term ‘date of arraignment,’ as used in this Order, means the date the Defendant appeared for arraignment, or if appearance at arraignment was waived, the latest scheduled arraignment date[.]” Docket no. 81 at 5.

² The Motion was also filed less than 20 days after Defendant Garcia’s waiver of personal appearance at arraignment on the initial indictment. Docket no. 73.

discovery materials to an expert retained by Defendant Garcia's counsel. Docket no. 126. The Court therefore finds that the motion for discovery (docket no. 84) should be DENIED as premature.

Defendant Garcia's motion seeking partial discovery of the pretrial services report prepared regarding Defendant Perez requests that the Court review the report *in camera* and provide to Defendant Garcia the portions of the report that contain exculpatory or impeachment material. Docket no. 85 at 4 (citing *United States v. Pena*, 227 F.3d 23, 26 (2d Cir. 2000)). In response, the Government notes generally that Defendant Garcia, who characterizes herself as Defendant Perez's live-in girlfriend or common law spouse, presumably would already be in possession of most of the information contained within the report regarding Defendant Perez's employment, income, expenses, and relationship to her; and specifically that Defendant Garcia herself "was the source consulted by Pretrial Services to confirm the information provided to them by codefendant Perez." Docket no. 127 at 4. The Government also argues that, since Perez is not a Government witness but has been designated as a defense witness, the Government is not required to disclose impeachment material regarding him. The Government therefore argues that any disclosure of the information contained within the pretrial report should be limited to materially exculpatory information not already within Defendant Garcia's possession. Docket no. 127 at 5-6.

The Court agrees with the Government that Defendant has not articulated a compelling need for the pretrial services information because she has not identified any category of information not already within her possession, *United States v. Pena*, 227 F.3d 23, 27 (2d Cir. 2000), and she has not described the manner in which the only categories of information her motion identifies—Defendant Perez's employment, income, expenses, and relationship with

her—would be exculpatory. The Court therefore finds that Defendant’s motion seeking partial discovery of Defendant Perez’s pretrial report (docket no. 85) should be DENIED.

Defendant’s Motion to Suppress does not set forth any factual showing or argument for suppression of evidence obtained during the search of Defendant’s bedroom, except to state that “On January 16, 2019, the government searched defendant’s bedroom without a warrant”; “The government violated defendant’s rights under the Fourth Amendment”; and that “The Court should therefore suppress the evidence seized by the government during the search of Defendant’s bedroom.” Docket no. 86. The only authorities cited by Defendant aside from the Fourth Amendment itself are three Fifth Circuit cases that deal with warrantless searches, but Defendant does not explain the manner in which those cases dealt with facts analogous to the search she challenges here. Docket no. 86 at 1 (citing *Linicomn v. Hill*, 902 F.3d 529, 536 (5th Cir. 2018) (affirming dismissal on qualified immunity grounds of 42 U.S.C. § 1983 claim arising from warrantless search of home); *United States v. Perales*, 886 F.3d 542, 545-46 (5th Cir. 2018) (affirming denial of motion to suppress challenging consent search of vehicle); *United States v. Wise*, 877 F.3d 209, 221-22 (5th Cir. 2017) (affirming denial of motion to suppress challenging consent search of luggage)).

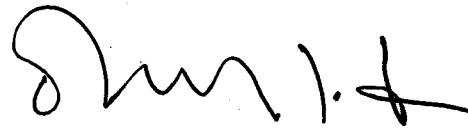
In response, the Government asserts that the search was carried out with the consent of Defendant Garcia, her codefendant Jose Perez, and the owner of the house, Defendant Garcia’s father. Docket no. 125 at 2. Defendant Garcia has not disputed these assertions or made any argument regarding the voluntariness of those consents, and the Government has shown that, although Defendant was in custody and had witnessed a police raid on the house, she had been advised of and had waived her *Miranda* rights before the “brief” questioning during which she gave her consent to the search. Docket no. 125 at 3. The Government has also shown that

Defendant Garcia—who has previously had judgments entered against her based on evidence obtained during consent searches of her property—gave her consent in writing, after being advised in writing of her right to refuse consent to the searches. Docket no. 125 at 3-5. And just as Defendant does not appear to contend that she did not consent to the search or that her consent was not voluntarily given, she does not dispute the voluntariness of the consents given by her father or Defendant Perez, or assert that she at any point objected to the search of the bedroom in her father's house that she shared with Defendant Perez. The Court therefore finds that the motion to suppress should be DENIED.

Conclusion and Order

It is therefore ORDERED that Defendant Rosalinda Garcia's Motion for Discovery, motion seeking partial discovery of Defendant Perez's Pretrial Services Report, and Motion to Suppress (docket nos. 84, 85, 86) are DENIED.

SIGNED this 28 day of March, 2019.



ORLANDO L. GARCIA
CHIEF UNITED STATES DISTRICT JUDGE